No. 89-1435

(3)

FILED
JUL 12 1990
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1990

AMERICAN RAILWAY AND AIRWAY SUPERVISORS ASSOCIATION, ET AL., PETITIONERS

v.

SOO LINE RAILROAD COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether a party to a nationwide bargaining agreement under the Railway Labor Act may decide, prior to commencement of bargaining over proposed changes to the railroad industry's national health and welfare plans, that it will not participate in national bargaining but instead will negotiate separately over its proposal to withdraw from the national plans.

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This brief is submitted in response to the Court's invitation to the Solicitor General to express the views of the United States.

STATEMENT

1. Labor relations in the rail and air transportation industries are governed by the Railway Labor Act, 45 U.S.C. 151 *et seq.* (RLA or Act). The RLA imposes on both carriers and employees a duty to "exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions * * *." 45 U.S.C. 152 First. See generally *Chicago & N.W. Ry.* v. *UTU*, 402 U.S. 570, 574-578 (1971).

The Act establishes a multi-stage process to encourage the voluntary resolution of major disputes.[1] Section 6 of the RLA, 45 U.S.C. 156, provides that a carrier or employee representative wishing to change an existing collective bargaining agreement must give at least 30 days written notice "of an intended change in agreements affecting rates of pay, rules, or working conditions * * *." Within ten days after receipt of the notice, the parties must agree upon the time and place for a conference between the representatives of the parties interested in such intended changes, and the conference must begin within the 30-day period set out in the notice. *Ibid.*

Section 2 Third of the Act, 45 U.S.C. 152 Third, provides that "representatives * * * shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives." If the conference between carrier and employee representatives fails to produce an agreement, then

> either or both [parties] may invoke the services of the National Mediation Board, which may also proffer its services *sua sponte* if it finds a labor emergency to exist. [45 U.S.C. 155 First.] If mediation fails, the Board must endeavor to induce the parties to submit the controversy to binding arbitration, which can take place, however, only if both consent. [45 U.S.C. 155 First, 157.] If arbitration is rejected and the dispute threatens "substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation

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[1] "Major disputes" are disputes about rates of pay, rules, or working conditions. "Minor disputes" are disputes about the interpretation or application of existing contracts. Minor disputes, unlike major disputes, are subject to compulsory arbitration. See *Pittsburgh & L.E. R.R.* v. *RLEA*, 109 S.Ct. 2584, 2589 n.4 (1989).

> Board shall notify the President," who may create an emergency board to investigate and report on the dispute. [45 U.S.C. 160.] While the dispute is working its way through these stages, neither party may unilaterally alter the *status quo*. [45 U.S.C. 152 Seventh, 155 First, 156, 160.]

Brotherhood of R.R. Trainmen v. *Jacksonville Terminal Co.*, 394 U.S. 369, 378 (1969).

2. Since 1954, many rail carriers and rail labor unions have negotiated national health and welfare plans covering rail employees.[2] Soo Line Railroad Co. (Soo), and its corporate predecessors, have participated in the national health and welfare plans since their inception; petitioner unions also participate in the plans. The national health and welfare plans were developed in national bargaining, also known as "national handling."[3] The health

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[2] The original 1954 agreement resulted in a national group health and life insurance policy. Subsequent negotiations resulted in a national dental insurance plan and a national major medical insurance plan for retirees. Pet. 4-5.

[3] "National handling" is not defined or even mentioned in the RLA. The court of appeals stated that " 'national handling' * * * refers to the collective bargaining practice whereby railroads and unions give bargaining authority to multi-carrier and multi-union committees, agreeing in advance to be bound by a national agreement reached by the two committees." Pet. App. 2a n.1. The district court stated that "rail labor unions and rail carriers have generally negotiated employee benefits on a national basis with designated national bargaining agents negotiating any changes. This is referred to as 'national handling.' " Pet. App. 12a-13a (quoted in Pet. C.A. Br. 6). In their petition, the unions argue that "there is nothing inherent in the nature of national handling which requires the designation of the same bargaining agents" by all carriers. Pet. 21-22. The unions observe that, until the 1970s, the carriers were represented by three regional carrier conference committees, which in turn selected a single negotiator without authority to bind the committees. Pet. 21 n.8; see *Chicago, B. & Q. R.R.* v. *Railway Employes' Dep't*, 301 F. Supp. 603, 607 (D.D.C. 1969).

As discussed more fully below, we agree with the unions that, aside from practical concerns about manageability, there is no

and welfare agreements, like most railroad industry agreements under the RLA, have no fixed duration, but typically contain "moratorium clauses" that obligate the parties to refrain from serving Section 6 notices for a specified period of time. Over the years, the national health and welfare plans have been modified through the national bargaining agents designated by the respective parties. The carriers typically have designated the National Carriers' Conference Committee (NCCC) as their national bargaining agent, while the unions have also designated a national bargaining agent such as the Health and Welfare Committee of the Cooperating Railway Labor Organizations (CRLO). As of 1985, the national health and welfare plans covered approximately 320,000 active employees of 242 railroads. Pet. App. 2a-3a, 12a-13a.

In early 1984, petitioner unions, pursuant to Section 6 of the RLA, served notice on Soo and other carriers that the unions intended to request changes to the national collective bargaining agreement, including the national health and welfare plans. Pet. App. 2a. The notices requested that Soo waive its right to conduct direct negotiations with the unions and authorize the NCCC to act for Soo in national bargaining. Pet. 5; Br. in Opp. 6. Soo agreed to participate in national bargaining over some of the proposed changes and to designate NCCC as its bargaining representative with respect to those proposals. But the railroad informed the unions that it would not designate NCCC as its bargaining agent with respect to the proposed changes in the health and welfare plans, and would not participate in national bargaining over those proposals. Instead, Soo informed the unions that it would negotiate separately with the unions over

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inherent reason why national bargaining must be conducted with a single representative on each side. We therefore agree that the selection of bargaining agents and the choice between national and "local" bargaining are distinct issues.

its own proposal to withdraw from the national health plans in favor of a self-insurance plan.[4] Pet. App. 13a.

Soo conducted separate negotiations and reached separate agreements with 8 of the 19 unions that represent its employees. Pet. App. 13a-14a & n.3. The remaining 11 unions, which represent about 90% of Soo's employees, refused to enter into separate negotiations with Soo. *Ibid.* These unions filed suit in federal district court to compel Soo to continue its participation in the national health and welfare plans and to participate in national bargaining on proposed changes to those programs. Soo counterclaimed, asserting that petitioner unions were violating the RLA by refusing to negotiate with Soo's designated bargaining representative over employee benefits. *Id.* at 12a. The railroad also invoked the mediatory services of the National Mediation Board (Br. in Opp. 7).[5] Soo continues to pay premiums on the national health and welfare plans for its employees represented by unions with which Soo has not reached a new agreement. Pet. App. 14a.[6]

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[4] The unions do not argue that Soo's decision to appoint the NCCC as its bargaining agent with respect to some issues but not others is prohibited by the RLA or the collective bargaining agreement. Thus, as the court of appeals noted, this case does not present the question whether "it is a modification of the collective bargaining agreement to sever the health and welfare issue from negotiation of wages and working conditions which are still authorized for national bargaining." Pet. App. 4a n.6.

[5] We are informed that mediation has been delayed pending resolution of this lawsuit.

[6] On May 3, 1990, pursuant to 45 U.S.C. 160, President Bush signed an Executive Order creating, effective May 5, a Presidential Emergency Board to investigate and report on disputes between most of the nation's major railroads, represented by the NCCC, and their employees, represented by 11 unions. Exec. Order No. 12,714, 55 Fed. Reg. 19,047. Hearings before the Emergency Board began the week of May 14. Although these disputes involve proposed modifications to the national health and welfare plans, it appears that the dispute involved in this case is not one of those referred to the Emergency Board.

3. The district court (Pet. App. 12a-23a) granted summary judgment for Soo on the unions' complaint. The court rejected the unions' contention that Soo had violated the RLA by refusing to participate in national bargaining and by engaging in separate negotiations over its proposal to withdraw from the national programs. The district court stated that the case posed two procedural questions: first, who will represent the parties at the bargaining table, and second, where the bargaining will take place. *Id.* at 17a.

With respect to the first question, the court held (Pet. App. 17a) that the RLA expressly guarantees each party the right to select its own bargaining representative. 45 U.S.C. 152 Third. The court therefore concluded that Soo "could not be required to designate the NCCC to negotiate on its behalf." Pet. App. 17a. The court observed that the unions "virtually acknowledged that fact by 'respectfully requesting' Soo to designate the NCCC as its representative." *Ibid.* In addition, the court noted, the choice of a bargaining representative does not appear to concern rates of pay, rules, or working conditions, and so is not a subject of mandatory bargaining under 45 U.S.C. 152 First. Pet. App. 17a.

As to the location of the bargaining between Soo's designated representative and the unions' representative or representatives, the court stated: "It appears that [national handling] would normally encompass centralized negotiations between two bargaining representatives, each of which represents more than one carrier or union, that result in a single agreement that applies to all of the participants." At times, however, "it appears that a single carrier or union may bargain with the collective representative of the other side." Pet. App. 17a. Accordingly, the court said, "it is possible that Soo, even if it chose to represent itself, may have been required to participate in centralized negotiations with a coordinated labor bargaining representative such as the CRLO, as well as with the NCCC." *Id.* at 18a.

The district court held that Soo was not required to participate in the national negotiations. Pet. App. 20a-21a. The court, analogizing the law governing withdrawal from multi-employer bargaining units under the National Labor Relations Act (NLRA), see *Charles D. Bonanno Linen Serv., Inc.* v. *NLRB*, 454 U.S. 404, 410-411 & n.5, 412 (1982), reasoned that Soo had withdrawn prior to the commencement of negotiations and therefore should not be required to participate in national bargaining. The court further held that Soo was not required to file a Section 6 notice of its intention to withdraw from national bargaining, since the railroad's response to the unions' Section 6 notices gave the unions sufficient notice of the railroad's proposal. Pet. App. 21a.

The district court also rejected the unions' arguments based on *Brotherhood of R.R. Trainmen* v. *Atlantic Coast Line R.R.*, 383 F.2d 225, 229 (D.C. Cir. 1967), cert. denied, 389 U.S. 1047 (1968). In *Atlantic Coast Line*, the Court of Appeals for the District of Columbia Circuit said that the question whether national handling is "obligatory will depend on an issue-by-issue evaluation of the practical appropriateness of mass bargaining on that point and of the historical experience in handling any similar national movements." 383 F.2d at 229. The district court here observed that the parties in the *Atlantic Coast Line* case were not required to participate in national handling, and concluded that subsequent cases "have found national handling to be obligatory only after the parties had commenced national bargaining and then attempted to withdraw or take action inconsistent with national handling." Pet. App. 19a. The court also held that, even if the *Atlantic Coast Line* standard were applicable in this case, it is "far from clear that national handling is the most practically appropriate manner in which to handle bargaining over health and welfare benefits." Pet. App. 21a-22a. The court pointed out (*id.* at 22a) that not all carriers participate in the national health and welfare plans, and that Soo had

succeeded in reaching individual agreements with 8 of 19 unions.[7]

4. The court of appeals affirmed. Pet. App. 1a-10a. The court held that 45 U.S.C. 152 Third and Fourth expressly afford both Soo and the unions the right to select their own bargaining representatives. The court of appeals, like the district court, drew on this Court's decision in the *Bonanno Linen* case to hold that a party may withdraw from national bargaining under the RLA so long as it does so before negotiations begin. Pet. App. 7a-8a. The court rejected the unions' argument that, because of the unique nature of railroad labor contracts, the NLRA rule is not applicable in the RLA context. *Ibid.* Although railroad agreements typically lack a definite termination date, the court concluded that "[t]he clear import of the RLA is that each proposal for modification under section 6 initiates a new, distinct set of negotiations for which the parties are free to select new bargaining agents." *Id.* at 8a. "To conclude otherwise," the court reasoned, "would, in effect, perpetually bind a carrier (or a union) to national representation once it agrees to such representation for a particular bargaining round. * * * [A]s a policy matter, this would have the negative effect of discouraging parties from utilizing the national bargaining tool in the first place." *Ibid.*

The court of appeals also rejected the unions' argument that the railroad was required to serve a Section 6 notice of its intent to withdraw from national bargaining and to bargain over this "change" before bargaining over the substance of a new plan. The court reasoned that "the selection of a bargaining agent is not a subject of mandatory bargaining under the Act. Nor is it a term in any existing agreement." Pet. App. 8a. The court of appeals observed that the unions, like the carriers, have the right to designate their bargaining representative, and are free to select a representative to "bar-

[7] The district court dismissed Soo's counterclaim without prejudice. Pet. App. 22a, 26a-27a.

gain for terms that match or exceed those of the current health and welfare plans." *Id.* at 9a. Finally, the court stated that "the railroad * * * [has] a duty to bargain with the representative or representatives * * * designated by the unions; it must bargain in good faith as to the terms and conditions of health and welfare coverage of the various employees represented by the union representatives." *Id.* at 10a.

DISCUSSION

Petitioners contend (Pet. 9-22) that Soo's proposal to withdraw from the national health and welfare plans must be negotiated at the national bargaining table. This is a relatively narrow contention as to which there is no conflict among the courts of appeals. Moreover, we believe the court of appeals properly affirmed the district court's grant of summary judgment. Consequently, this case does not warrant further review.

1. We note at the outset that the scope of the dispute between petitioner unions and Soo has been narrowed significantly by concessions made during the course of the litigation. In their petition (Pet. 20-22), the unions concede that Soo is not required to select the NCCC as its bargaining representative. Petitioners recognize that the railroad "unquestionably has the right to designate its own representative for collective bargaining" (*id.* at 4; see also *id.* at 20), and that the railroad may choose either to designate the NCCC as its representative or to "c[o]me to the national bargaining table as its own representative." *Id.* at 20. In addition, petitioners concede that, so long as Soo "participated in the national bargaining and bargained in good faith, it could refuse to agree to every proposal for changes in the national plans and could bargain to impasse on its own proposal for its withdrawal from the national plans." *Id.* at 20-21. Thus, the unions no longer argue, if they ever did, that the RLA requires Soo to continue its participation in the national health and welfare plans. Instead, the unions

recognize that Soo's continued participation is a matter for negotiation. For its part, Soo does not dispute that it is required to negotiate over its proposal to withdraw from the national health and welfare plans, and is obligated to continue its participation in the national plans until it reaches agreement or exhausts the procedures enumerated in the RLA.[8] See Br. in Opp. 7.

2. As we understand its decision, the court of appeals decided three distinct issues. First, it held that Soo need not bargain with the unions over its decision not to designate the NCCC as its bargaining representative. Second, the court held that Soo's proposal to withdraw from the national health and welfare plans and substitute its own self-insurance plan is a subject of mandatory bargaining under the RLA. Finally, the court of appeals held that Soo need not negotiate at the national bargaining table, but may engage in separate "local" negotiations with the unions. The parties now agree on the resolution of the first two issues; the third, in our view, does not warrant the attention of this Court.

a. As to the first issue, the unions concede that Soo is not required to bargain over its refusal to designate the NCCC as its bargaining representative. This is plainly correct. As this Court has observed, "[f]reedom of choice in the selection of representatives on each side of the dispute is the essential foundation of the statutory scheme." *Texas & N. O. R.R.* v. *Brotherhood of Ry. & S.S. Clerks*, 281 U.S. 548, 569 (1930). The plain language of 45 U.S.C. 152 Third and Fourth grants both carriers and unions the right to select their own bargaining representatives. In addition, the designation of a party's bargaining representative generally is not the subject of any express or implied agreement between the carriers and the unions, and therefore is not subject to

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[8] There is also no dispute over the geographical location of the bargaining. Soo has stated that it is willing to negotiate in Washington, D.C., where the national negotiations are conducted. Pet. App. 10a n.11.

section 6 notice and bargaining.[9] Cf. *Pittsburgh & L.E. R.R.* v. *RLEA*, 109 S. Ct. 2584, 2592-2593 (1989) (no express or implied agreement that carrier would not sell its assets). Accordingly, Soo was entitled to select its own bargaining representative before the bargaining commenced. The unions likewise were free to select their own representatives. Presumably, the unions could designate the Health and Welfare Committee of the CRLO (the unions' representative in the national health and welfare negotiations) as their sole representative in negotiations with Soo.[10]

b. As to the second issue, Soo correctly recognizes that it must adhere to the terms and conditions of the existing national agreement on health and welfare until such time as it either reaches a new agreement with the unions' bargaining representatives or exhausts its mandatory bargaining obligations under the RLA. Br. in Opp. 7. And the unions concede that Soo is entitled to bargain to impasse over its proposal to withdraw from the national plans. Pet. 20-21. The parties thus agree that Soo's withdrawal proposal is a subject of mandatory bargaining. It follows that the unions are incorrect in asserting (*id.* at 12) that the decision of the court of appeals permits carriers to "exit from national agreements merely by refusing to participate in [national] negotiations." On the contrary, Soo must negotiate over whether it may exit from the national plans. At this stage, Soo's proposal to withdraw is simply that—a proposal to the unions. The unions are free to propose that Soo remain

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[9] The court of appeals stated that selection of a bargaining agent was not "a term in any existing agreement" between Soo and the unions. Pet. App. 8a.

[10] In some instances the NCCC, as national bargaining representative for the railroads, has negotiated separately with individual unions. See Pet. App. 17a. We see no objection to a national bargaining agent for the unions bargaining separately with individual railroads.

in the national plans, and to adhere to their position within the limits of good-faith bargaining.[11]

c. The only remaining issue in dispute, we believe, is whether the bargaining between Soo and the unions will take place at the national bargaining table or at a separate "local" bargaining table. To the extent that this is an issue of substance as well as form, we agree with the courts below that separate bargaining is appropriate.

One consequence of the unions' position in this case is that Soo might be required to bargain with parties other than the unions representing its own employees—for example, unions that represent only employees of other railroads participating in the national plans. But it is far from clear that either the NCCC, as the bargaining representative of carriers other than Soo, or unions that do not represent Soo employees, have any statutory right to participate in bargaining over Soo's proposal to withdraw from the national plans in favor of a self-insurance plan. Petitioners do not suggest that such a right can be found in the collective bargaining agreement. Nor is such a right expressly conferred by any provision of the RLA.[12] Moreover, the unions' position, if adopted by the courts, could have disturbing and far-reaching consequences. For example, several railroads could prevent

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[11] We see no reason why other participants in the national health and welfare plans would object if Soo and the unions were to agree, in "local" negotiations, that Soo should continue as a participant in the national plans. Petitioners themselves contend that adding additional carriers to the national health and welfare plans reduces the cost of those plans to all participants. See Pet. 13-14.

[12] It might be argued that such a right is implied by the statutory duty to maintain collective bargaining agreements (45 U.S.C. 152 First). But to imply such a right would strain the text of the statute, and would appear to be inconsistent with the statutory requirement that "[a]ll disputes between a carrier or carriers and its or their employees shall be considered * * * in conference between representatives designated * * *, respectively, by the carrier or carriers *and by the employees thereof* interested in the dispute." 45 U.S.C. 152 Second (emphasis supplied).

a competing railroad from concluding a separate agreement on wages by refusing to permit the railroad to withdraw from a nationwide wage agreement.

Petitioners do not explain how national bargaining over Soo's withdrawal proposal could be integrated with bargaining over the unions' proposed changes to the national health and welfare plans. The two proposals are quite different. At the very least, such integrated national bargaining, with multiple bargaining representatives on each side and multiple proposals on the table, would be cumbersome. In practice, it might well turn out that Soo's withdrawal proposal and the proposed changes to the national plans would be negotiated at separate bargaining sessions.

If Soo were required to participate in national bargaining, its insistence on withdrawing from the national plans could lead to an impasse at the national level even if the NCCC, as representative of the other carriers, agreed with the union representatives on changes to the national plans. The risk of impasse would be multiplied if several carriers or unions declined to grant negotiating authority to national bargaining representatives and instead came to the national bargaining table with their own conflicting proposals. Such a bargaining structure is unlikely to promote "the prompt and orderly settlement of * * * disputes" between carriers and their unions. See 45 U.S.C. 151a. Consequently, we believe the court of appeals reasonably concluded that Soo is not required to participate in the national bargaining.

We also agree with the courts below that Soo did not violate the RLA by failing to provide a formal Section 6 notice of its refusal to appoint the NCCC as its bargaining representative and its intention to propose its withdrawal from the national health and welfare plans in separate negotiations. The unions initiated the negotiation process by serving Soo with a Section 6 notice of proposed changes in the national plan. Soo responded by notifying the unions of its decision not

to participate in the national negotiations and to negotiate for a separate self-insurance plan. Soo's notice adequately informed the unions of "the purpose sought to be attained" by Soo, and so satisfied the practical requirements of Section 6. See *Pullman Co.* v. *Order of Ry. Conductors & Brakemen*, 316 F.2d 556, 562 (7th Cir.), cert. denied, 375 U.S. 820 (1963).

3. We recognize that the decision of the court of appeals is in some tension with dicta in the opinion of the District of Columbia Circuit in *Brotherhood of R.R. Trainmen* v. *Atlantic Coast Line R.R., supra.* But we do not believe there is a conflict. In the *Atlantic Coast Line* case, the court of appeals declined to require national handling of a dispute over the size of the "crew consist" of conductors and trainmen on railroad yard and road crews. In the course of its opinion, the court stated that "[w]hether [national handling] is * * * obligatory will depend on an issue-by-issue evaluation of the practical appropriateness of mass bargaining on that point and of the historical experience in handling any similar national movements." 383 F.2d at 229. As the courts below observed, neither *Atlantic Coast Line* nor any other decision of a court of appeals has held that national handling is obligatory where a party announces its intention to bargain locally in advance.[13] See Pet.

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[13] In *Chicago, B. & Q. R.R.* v. *Railway Employes' Dep't*, 301 F. Supp. 603 (D.D.C. 1969), the district court held that a Section 6 notice requesting amendments to an existing national agreement on "contracting out" should have been served on all parties to the national agreement rather than on a single railroad. In that case, however, the unions attempted to break up a multiemployer bargaining unit by serving the Section 6 notice only on a single carrier. There is an obvious difference between a party's own choice not to participate in a national bargaining unit and efforts to force another party out of a bargaining unit. In addition, the unions in the *Chicago, B. & Q.* case attempted to negotiate with a single carrier over proposed amendments to a national agreement signed by 147 carriers. *Id.* at 605. Again, there is a difference between proposing to withdraw from a national agreement and proposing to amend the national agreement.

App. 18a-20a (discussing cases). There is thus no basis for concluding that the District of Columbia Circuit would have decided this case differently. Indeed, the district court in this case expressly considered the "historical experience" and "practical appropriateness" of national handling of health and welfare issues in the railroad industry, and concluded that national handling was not mandatory even under the dicta of *Atlantic Coast Line*.[14] See Pet. App. 21a-22a.

4. Finally, we agree with the courts below that the rule of *Bonanno Linen*, *supra*, is an appropriate one in the context of the RLA.[15] The process established by the RLA for resolving major disputes is, above all, a process for reaching voluntary agreements. See *Brotherhood of R.R. Trainmen* v. *Jacksonville Terminal Co.*, 394 U.S. at 378. No provision of the RLA requires or even refers to national handling, let alone requires national handling on the basis of "practical appropriateness" or "historical experience." We therefore see no basis in the RLA for requiring a carrier or union to submit to national bargaining where, as here, the party announces in advance of any bargaining that it chooses not to be included in the national bargaining unit.

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[14] Even if national bargaining were required under *Atlantic Coast Line*, petitioners concede that Soo is entitled to appoint its own bargaining representative and bargain to impasse over its proposal to withdraw from the national health plans. In our view, the narrow question whether Soo is required to send its representative to the national bargaining table—and thus bargain with parties to the national agreement other than the representatives of its own employees—does not warrant the attention of this Court in the absence of a clear-cut conflict among the circuits.

[15] Although the Court has cautioned against wholesale transfer to the RLA of rules fashioned in the context of the NLRA, see *Brotherhood of R.R. Trainmen* v. *Jacksonville Terminal Co.*, 394 U.S. at 383, it also has recognized that the NLRA may afford a helpful analogy in RLA cases. See *Trans World Airlines, Inc.* v. *Independent Fed'n of Flight Attendants*, 109 S. Ct. 1225, 1230 (1989).

We recognize that national bargaining under the RLA, like multiemployer bargaining under the NLRA, may in many instances play a role "in the effectuation of the national policy of promoting labor peace." 454 U.S. at 409 (quoting *NLRB* v. *Truck Drivers Local Union No.* 449, 353 U.S. 87, 95 (1957)). Thus, considerations similar to those that gave rise to the NLRB rule approved in *Bonanno Linen* may well justify requiring that once a party has chosen to designate a representative and to enter into national bargaining in connection with a particular Section 6 notice, the party cannot then revoke that decision. For example, if a party to national handling were permitted to withdraw simply because the agreement turns out to be less favorable than expected, the result would be to "undermine the utility of multiemployer [or multi-union] bargaining." 454 U.S. at 412 & n.8.

The unions argue that the rule of *Bonanno Linen* should not be applied in the RLA context because "[NLRA] agreements * * * expire" while "RLA agreements continue indefinitely."[16] Pet. 19 n.6. The unions' distinction is not persuasive. The absence of an expiration date in many collective bargaining agreements negotiated under the RLA does not imply that Congress contemplated that those agreements would continue indefinitely. On the contrary, the statute provides that changes may be proposed by any party on only 30 days' notice. 45 U.S.C. 156. In fact, railroads and their unions routinely resort to moratorium clauses to provide an added measure of durability to agreements under

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[16] In fact, many agreements negotiated under the RLA, notably in the airline industry, contain durational clauses. The interaction of these clauses and the provisions of the RLA have been a matter of dispute in the courts of appeals. See, *e.g.*, *Trans World Airlines, Inc.* v. *Independent Fed'n of Flight Attendants*, 809 F.2d 483 (8th Cir. 1987), aff'd by an equally divided Court, 485 U.S. 175 (1988); *EEOC* v. *United Air Lines*, 755 F.2d 94 (7th Cir. 1985); *IAM* v. *Reeve Aleutian Airways*, 469 F.2d 990 (9th Cir. 1972), cert. denied, 411 U.S. 982 (1973).

the RLA. We agree with the courts below that the express statutory right of each party to select its own bargaining representative, 45 U.S.C. 152 Third, comes into play each time a party initiates a new round of bargaining by serving a Section 6 notice on the other parties to the agreement. If the choice to engage in national bargaining were irrevocable and perpetual, national bargaining would soon cease to promote labor peace.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JULY 1990

☆ U. S. GOVERNMENT PRINTING OFFICE: 1990 262203 20009